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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/990,654   | 11/21/2001  | Richard Knauer       | CAO-0111            | 3656             |
| 23413  | 7590        | 06/30/2006           | EXAMINER            |                  |
| CANTOR COLBURN, LLP<br>55 GRIFFIN ROAD SOUTH<br>BLOOMFIELD, CT 06002 |             |                      | NGUYEN, CAMTU TRAN  |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3743                |                  |

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/990,654 | <b>Applicant(s)</b><br>KNAUER ET AL. |  |
|                              | <b>Examiner</b><br>Camtu T. Nguyen   | <b>Art Unit</b><br>3743              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on election filed 6-9-06.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10,33-36,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10,33-36,41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election***

Applicant's election without traverse of Group I, claims 1-10, 33-36, and 41-42, in the reply filed on June 9, 2006 is acknowledged.

Claims 11-17, 18-32, 37-40, and 43 have been cancelled.

### ***Response to Amendment & Arguments***

Applicant's amendment and arguments filed August 27, 2004 have been fully considered but they are not persuasive.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-10, 33, 36, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falco (U.S. Patent No. 5,799,658). Falco discloses an earplug comprising a foam (12) having an insertable portion and a flange portion (13), and component (14) nestable with and bondable with the foam (12), Figure 3a illustrating the component (14) is disposed at least partially within the foam (12) insertable portion. With regards to the component comprises a vent that which comprises a tortuous path, as recited, Falco discloses component (14) is placed

in a mold and foam (12) is formed within the fold such that the foam penetrates a portion of the component (14), thereby forming a mechanical bond between the foam (12) and the embedded portion of the component, more importantly, however, the entrapped air within the mold may also pass through or into the component such that the component further inherently comprising a vent means to vent a mold during manufacturing process, such vent means would inherently possess a tortuous path. In particular, Falco discloses the porosity of component is selected to allow entrapped air in the closed mold to pass through the porous part, thereby venting the mold during manufacturing (column 5 lines 22-30). Figure 3b of Falco illustrating the foam (12) has penetrated various pores (22, 23) in component (14) and that it is likely that foam (24, 25) which has interpenetrated these pores is denser than foam (26) which surrounding component (14). With regards to claims 2 and 3, Falco discloses the foam (12) is self-rising polyurethane or acrylic blend foams (column 6 lines 41-53) and the component (14) are plastics (column 5 lines 32-44). With regards to the component (14) disposed at least partially within the foam handle, such handle is being broadly interpreted and being read on such limitation by the Falco's flange portion (13) of the foam (12). With regards to claim 33, it has been held that the functional "whereby" statements, as recited therein, does not define any structure and accordingly can not serve to distinguish. *In Re Mason*, 114 USPQ 127, 44 CCPA 927 (1957). With regards to claim 4, applicant did not disclose the criticality for the claimed limitation, therefore it would have been obvious to one of ordinary skilled in the art during the time of the invention to made to have carved a longitudinal groove at least partially along the Falco's component (14) and at least partially along the flange portion (13) for such would provide a better grip for the user when using the device, thereby, preventing any potential slippage.

Claims 7, 8, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falco (U.S. Patent No. 5,799,658) as applied above, and further in view of Cavender (U.S. Patent No. 4,946,363). Falco discloses an earplug comprising a foam (12) having an insertable portion and a flange portion (13), and component (14) nestable with and bondable with the foam (12) but does not teach the vent comprises a screw threaded portion, as recited. Cavender discloses in Figures 1 and 2 improvements in mold vents comprising one embodiment comprising the vent shown in a threaded plug. Therefore it would have been obvious to one skilled in art during the time of the invention to modify the Falco's component (14) to include threaded as taught by Cavender for the purposes of rapid venting. With regards to claims 8 and 35, it would have been obvious to one skilled in the art to recognize the venting in the knurled formation as an equivalent form of venting to the threaded form.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

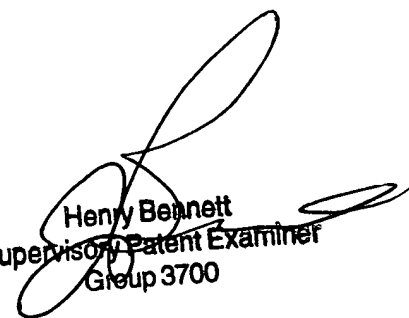
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Camtu Nguyen  
June 26, 2006

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700